

Supreme Court, U.S.
FILED

OCT 28 1987

JOSEPH F. GRANOL, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

NO. 87-5565

CHERLYN CLARK,
Petitioner
v.
GENE JETER,
Respondent

**RESPONDENT'S BRIEF IN OPPOSITION TO
A PETITION FOR WRIT OF
CERTIORARI FROM THE
DECISION OF THE SUPERIOR
COURT OF PENNSYLVANIA**

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QUESTIONS PRESENTED

1. Should This Court grant certiorari in a case of no precedential value where Petitioner's action had been time-barred under either the now repealed six-year statute of limitations or the subsequent eighteen-year statute of limitations retroactively applied?
2. Should This Court grant certiorari where petitioner is questioning the constitutionality of a defunct and repealed statute which had properly been determined by the highest court of the Commonwealth of Pennsylvania to not be violative of the equal protection and due process guarantees of the Fourteenth Amendment of the United States Constitution?

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BRIEF IN OPPOSITION TO
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FROM THE DECISION OF THE
SUPERIOR COURT OF PENNSYLVANIA

Respondent, Gene Jeter, prays that Petitioner's request for a Writ of Certiorari be denied.

COUNTER STATEMENT OF THE CASE

Tiffany Clark was born to Cherlyn Clark on or about June 11, 1973. David Green, and not Gene Jeter, was listed by Cherlyn Clark as the father on the baby's birth certificate. Ten years

and two months later, in August of 1983, Cherlyn Clark filed a support action against Gene Jeter, alleging him to be the father of Tiffany Clark. Gene Jeter denied that he is the father; and, in defense, further asserted the applicable statute of limitations. The child is now 14 years old.

Despite petitioner's recitations to the contrary, there are no blood test results in the record and the trial court did not find that Gene Jeter had supported the subject child.

The Court of Common Pleas of Allegheny County found, based on the facts of this case, that Cherlyn Clark's claim was barred by the statute of limitations and dismissed her Complaint. Cherlyn Clark's subsequent appeal to the Superior Court was denied. Cherlyn Clark's subsequent Application for

Permission to file an Application for Remand was denied. Cherlyn Clark's subsequent Application for Reargument was denied. The Supreme Court of the Commonwealth of Pennsylvania denied her Application for Permission to File an Appeal.

REASONS FOR DENYING THE PETITION

This Respondent is one of the few people caught between a prior statute of limitations and an expanded statute of longer duration. Therefore, a review of this case is of little importance to most.

The Superior Court of the Commonwealth of Pennsylvania found that Gene Jeter was entitled to have the action against him brought to a conclusion. Although the court did address the issue of retroactivity of Pennsylvania's eighteen-year statute, that inquiry was

not determinative. Cherlyn Clark's action was time-barred in any event. Her complaint for support was dismissed on July 8, 1985 . . . some eight months prior to the effective date of the eighteen-year statute of limitations. It would, therefore, seem that Petitioner's brush sweeps too broadly in requesting Certiorari. Limited to the facts and circumstances of the instant matter, any decision would be of little, if any, precedential value.

Petitioner's reliance upon the position of the Department of Health and Human Services is misplaced. The comment cited relates solely to the mechanism of the establishment of paternity and not to actions already time-barred or judicially concluded. See, Child Support Enforcement Program, Implementation

of Child Enforcement Amendments of 1984, 50 Fed. Reg. 90, 19608, 19631 (1985), comment to 45 C.F.R. Section 302.70(a) (5). Indeed, if any legislature or court would seek to impose an expanded statute of limitations upon a defendant who had successfully raised the bar of time, there would necessarily be a constitutional inquiry. The privilege to raise a statute of limitation is a vested right constitutionally protected by the Fourteenth Amendment to the Federal Constitution. ELECTRICAL WORKERS V. ROBBINS AND MYERS, INC., 429 U.S. 229 (1976); CHASE SECURITIES CORP. V. DONALDSON, 325 U.S. 304 (1945); CAMPBELL V. HOLT, 115 U.S. 620 (1885). Petitioner would have This Court revisit the constitutional arguments continually raised for the last nineteen years in

these statute of limitation cases. Yet, the Commonwealth of Pennsylvania has met these arguments with contemptative consideration. ASTEMBORSKI V. SUSMARSKI, 502 Pa. 409, 466 A.2d 1018 (1983); PETRI V. SMITH, 307 Pa. Super. 261, 453 A.2d 342 (1982); VON COLLN V. PENNSYLVANIA RAILROAD CO., 367 Pa. 232, 80 A.2d 83 (1951). It would now serve no purpose to require that we examine the constitutionality of a defunct and repealed statute.

The thing is done. It was a political question which required a legislative response. The Congress of the United States spoke; and, the Pennsylvania Legislature responded. It is over. Let the matter rest.

CONCLUSION

For these reasons, Respondent respectfully requests that Petitioner's prayer for a Writ of Certiorari be denied.

Respectfully submitted,

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